

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-10237-2021

Date of Decision : February 06, 2023

Nasrudeen and others

.....Petitioners

VERSUS

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Vikram Singh, Advocate
for the petitioners.
Mr. P.P.Chahar, DAG, Haryana.

SURESHWAR THAKUR, J.(ORAL)

1. One Jamil instituted a petition under Section 7(2) of the Punjab Village Common Lands (Regulation) Act 1961 (hereinafter referred to as 'the Act'), as applicable to the State of Haryana. The said petition was assigned case No.7/ACIG/2012. The petitioners therein, impleaded therein, the respondents concerned, with a claim against them that there were encroachers, upon, land owned and possessed by the Gram Panchayat concerned. The said petition becomes affirmatively decided on 23.07.2013. The decision on the above *lis* is carried in Annexure P-2. A reading of the operative part of the decision drawn by the learned Collector concerned

reveals, that the respondents were ordered to be evicted from the petition land therein, and, also upon them became imposed, a penalty of Rs.5,000/- per hec per year.

3. Aggrieved against the order (Supra), the aggrieved concerned, preferred appeal bearing No.278/District Collector Mewat, before the learned Appellate Authority concerned, and, through an order made thereon on 07.01.2015 (annexed as Annexure P-3), the said appeal became dismissed on the ground that since the proviso to Section 13(B) of the Act (Supra), provisions whereof becomes extracted hereinafter, cast an interdiction against the maintainability of the appeal, unless the amount of penalty as becomes earlier imposed upon the encroachers concerned, is deposited before the Collector concerned. Since, at the time of the filing of the statutory appeal (Supra), the penalty as became imposed upon the encroachers concerned, upon, the Panchayat lands concerned, did not evidently come to be deposited, before the Collector concerned, therefore, obviously for breach being made to the above proviso, thus led the learned Appellate Court to dismiss the appeal, but on the ground that it being ill constituted.

'/13-B. Appeals and revision- (I) Any person aggrieved by an order of the Assistant Collector of the first grade may, within a

period of thirty days from the date of order passed under sub-section (1) or sub-section (2) of section 7 prefer an appeal to the Collector in such form and manner, as may be prescribed, and the Collector may after hearing the appeal, confirm, vary or reverse the order as he deems fit:

Provided that no such appeal shall lie unless the amount of penalty, if any, imposed under sub-section (2) of section 7, is deposited with the Collector.]

(2) The Commissioner may, suo motu 2[or on an application made to him by any person aggrieved by an order passed under the proviso to sub-section (1) of section 7 at any time] call for the record of any proceedings pending before, or order passed by, any authority subordinate to him for the purpose,,of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit:-

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.”

4. Aggrieved therefrom, the petitioners filed a revision petition before the Revisional Court concerned. The said Execution Revision No. 066/2017-18, was hence dismissed, through an order made thereon, on 28.11.2019, order whereof becomes annexed as Annexure P-4, however, only after the learned Revisional Court going into the merits of the case also.

The noticeable infirmity in the above drawn order becomes apparently

comprised in the factum, that the learned Revisional Court, was initially under a legal obligation to make a conclusion whether the dismissal of the aggrieved's appeal before the Appellate Court concerned, but on the ground, that it was ill constituted, for breach being made of the mandate of the proviso (Supra), rather was a validly drawn reason or was not a validly drawn reason, especially when the learned Appellate Court did dismiss the statutory appeal only on the above ground, but without going into the merits of the said statutory appeal. However, a reading of the discussion, as made by the Revisional Court does not disclose, that the said facet of the controversy, became ever delved into nor obviously any answer became meted thereto. It was but incumbent upon the learned Revisional Court, to atleast initially draw a reason, for either concurring or disconcurring with the reason (Supra) as became assigned by the learned Appellate Court concerned, to declare the statutory appeal (Supra), to be an ill constituted one. Moreover, only thereafter, could the learned Revisional Court, well proceed to make an order of remand upon the Appellate Court but with a direction that the same be decided also on merits. However, as above stated, the above has not happened. Therefore, the rendition of the impugned decision as made by the Revisional Court, and, as becomes carried in Annexure P-4, is completely stained with a vice of complete non application

of mind, qua the applicability or inapplicability of the proviso (Supra) qua the statutory appeal.

5. Therefore, after allowing the instant petition, the impugned order as carried in Annexure P-4 is quashed and set aside. The revisional authority concerned is directed to restore the revision petition to its original number, and, shall thereafter in accordance with law, make a fresh decision upon the revision petition (Supra), but only after giving an opportunity of hearing to all the affected concerned. It is clarified that the above undealt with facet of the controversy shall also be decided in accordance with law, whereafter the Revisional Court may well consider the makings of remand of the lis to the remandee Court, to decide the lis on merits.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 06, 2023
mamta

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No